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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,850	01/26/2004	Jocrg Mueller	CM2587CQ	9786

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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/764,850	Applicant(s) MUELLER ET AL.	
	Examiner Michael G. Bogart	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-30 and 32-34 is/are rejected.
- 7) ☒ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 33 is objected to because of the following informalities: Claim 33 depends from claim 36. There is no claim 36 pending in the application. For the purposes of examination against the prior art, claim 33 is interpreted herein as depending from claim 28. Appropriate correction is required.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15 and 17-19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Endres *et al.* (EP 0 433 951 A2; hereinafter “Endres”).

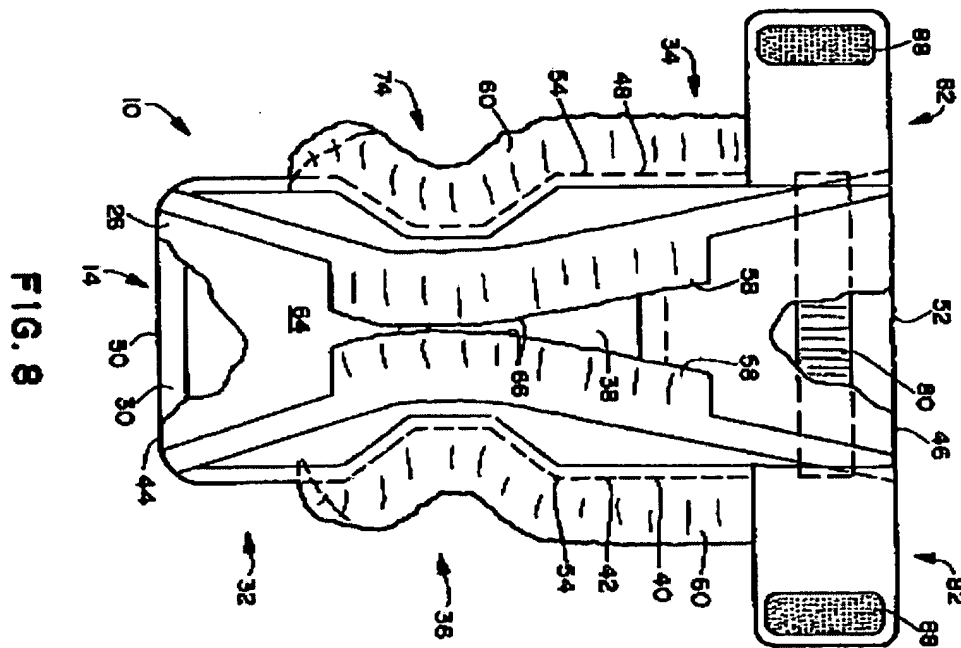
Regarding claim 15, Endres teaches an absorbent article (10) comprising:

a topsheet (26, 58) and a backsheet (30) joined together and forming a first waist region (46), a second waist region (44), a crotch region (24) interposed between the waist regions (26, 58, 30), and a void space (56) between the topsheet (26, 58) and the backsheet (30) for receiving bodily exudates, the absorbent article (10) having a longitudinal axis and a lateral axis,

wherein the topsheet (26, 58) has a slit opening (38) providing access into the void space (56), the slit opening (38) being positioned in at least the crotch region (24) extending along the

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longitudinal axis, and having longitudinally extending laterally opposing side edges (66), the topsheet (26, 58) also having longitudinally extending laterally opposing elasticated regions (58, 66) disposed along the respective side edges (66) of the slit opening (38)(see figure 8, infra).



Regarding claim 17, Endres teaches that the elastic (58, 66) are spaced apart least in the crotch region and diverge toward each of the waist regions (44, 46).

Regarding claim 18, Endres teaches a diaper.

Regarding claim 19, Endres teaches that the void space (56) is between the topsheet (26, 58) and the backsheet (30).

Claims 15, 16, 20-22 and 24-27 are rejected under 35 U.S.C. § 102(b) as being anticipated by Tanji *et al.* (US 5,439,459 A; hereinafter "Tanji").

Regarding claim 15, Tanji teaches an absorbent article (10) comprising:

a topsheet (14) and a backsheet (12) joined together and forming a first waist region (24), a second waist region (24), a crotch region interposed between the waist regions (24), and a void space between the topsheet (14) and the backsheet (12) for receiving bodily exudates, the absorbent article (10) having a longitudinal axis and a lateral axis,

wherein the topsheet (14) has a slit opening (16) providing access into the void space, the slit opening (38) being positioned in at least the crotch region extending along the longitudinal axis, and having longitudinally extending laterally opposing side edges (16a), the topsheet (14) also having longitudinally extending laterally opposing elasticated regions (17a, 17b) disposed along the respective side edges (16a) of the slit opening (16)(see figures 1 and 2, *infra*).

Regarding claim 16, Tanji teaches first and second elastic waistbands (24), the elasticated regions (17a, 17b) extending longitudinally between and being attached the elastic waistbands (24).

Regarding claim 20, Tanji teaches that the side edges (16a) or the slit opening (16) form longitudinally opposing first and second end edges of the slit opening having the forms of points where the side edges (16a) meet (see figure 1).

Regarding claim 21 and 22, Tanji teaches first and second elastic waistbands (24), the elasticated regions (17a, 17b) extending longitudinally between and being attached the elastic waistbands (24).

Regarding claim 24, Tanji teaches a diaper.

Regarding claim 25, Tanji teaches an absorbent core (13) between the topsheet (14) and the backsheet (12).

FIG. 1

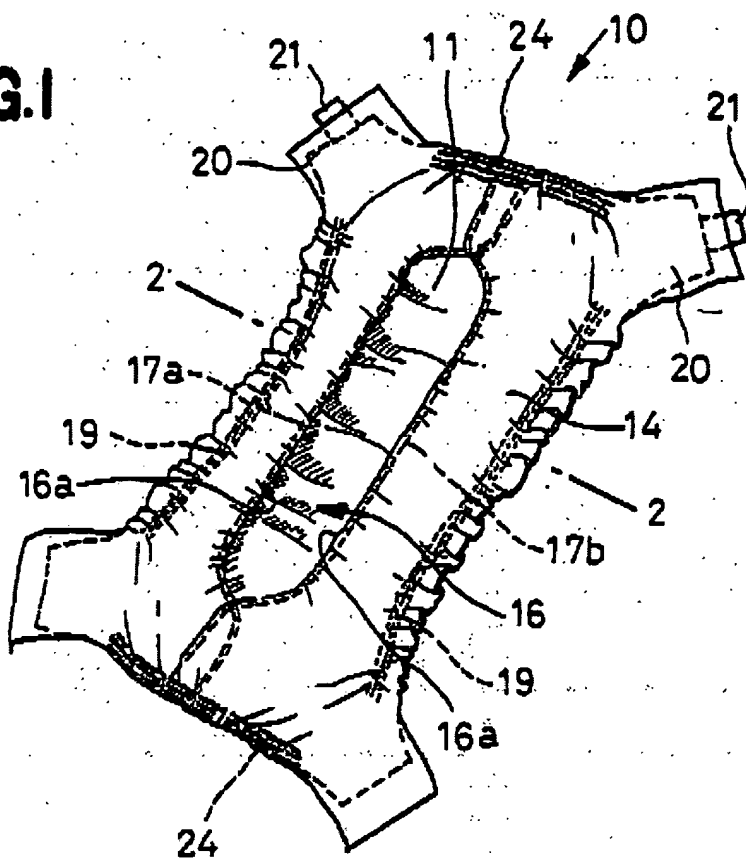
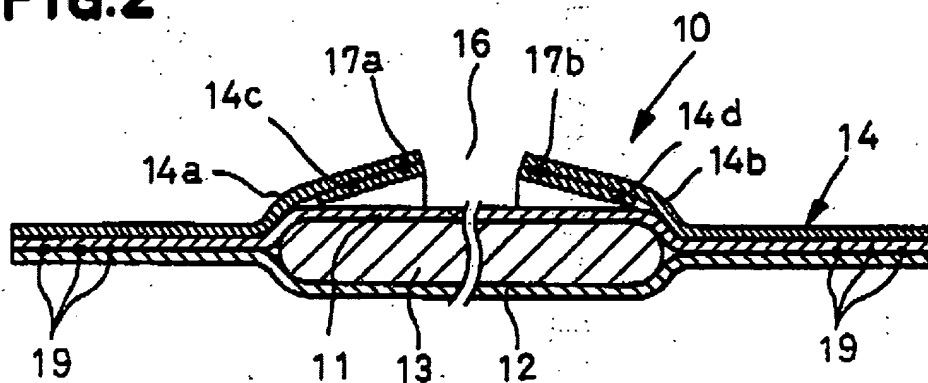


FIG. 2



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Regarding claim 26, Tanji teaches that the void space is between the topsheet (14) and the backsheet (12).

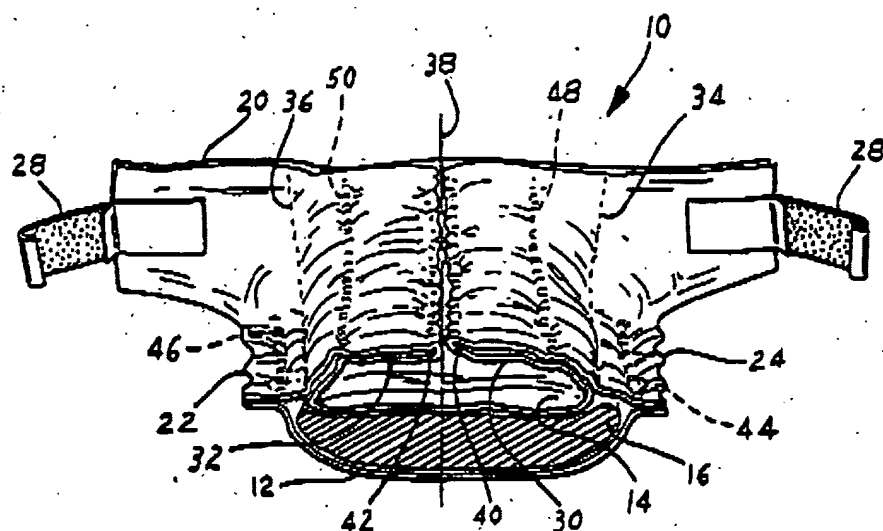
Regarding claim 27, Tanji teaches that the end edges are spaced from the lateral axis.

Claims 15, 20 and 23 are rejected under 35 U.S.C. § 102(b) as being anticipated by Enloe (US 4,704,116).

Regarding claim 15, Tanji teaches an absorbent article (10) comprising:

a topsheet (30, 32) and a backsheet (12) joined together and forming a first waist region (18), a second waist region (20), a crotch region interposed between the waist regions (18, 20), and a void space between the topsheet (30, 32) and the backsheet (12) for receiving bodily exudates, the absorbent article (10) having a longitudinal axis and a lateral axis,

wherein the topsheet (30, 32) has a slit opening (38) providing access into the void space, the slit opening (38) being positioned in at least the crotch region extending along the longitudinal axis, and having longitudinally extending laterally opposing side edges, the topsheet (30, 32) also having longitudinally extending laterally opposing elasticated regions (40, 42) disposed along the respective side edges of the slit opening (38)(see figure 4, *infra*).



Regarding claim 20, Enloe teaches that the side edges of the slit opening (38) form longitudinally opposing first and second end edges of the slit opening having the forms of points where the side edges meet (see figure 4).

Regarding claim 23, Enloe teaches elasticated regions (40, 42) laterally spaced apart a least distance in the crotch region (see figure 7, infra).

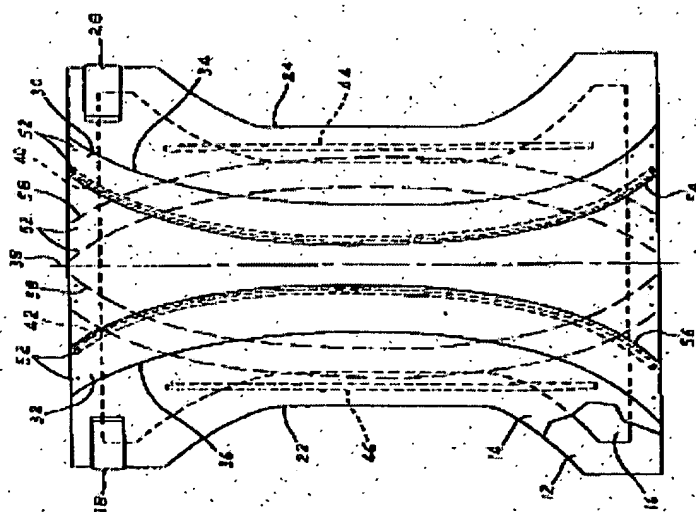


FIG. 7

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 28-30 and 32-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanji.

Regarding claim 28, the slit opening (16) of Tanji is approximately hexagonal in shape (see figure 1, supra).

Mere changes in shaper are not sufficient to patentably distinguish a claimed invention over the prior art. See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Regarding claim 29, Tanji teaches elastic first and second waistbands (24).

Regarding claim 30, Tanji teaches first and second elastic waistbands (24), the elasticated regions (17a, 17b) extending longitudinally between and being attached the elastic waistbands (24).

Regarding claim 32, Tanji teaches a diaper.

Regarding claim 33, Tanji teaches that the void space is between the topsheet (14) and the backsheet (12).

Regarding claim 34, Tanji teaches that the end edges are spaced from the lateral axis.

Allowable Subject Matter

Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The art of record fails to disclose or suggest the combination of an absorbent article having a hexagonal slit disposed in the crotch region combined with parallel overlying longitudinally extending elastic regions that have a least lateral distance from each other in the crotch region and which diverge from each other towards both opposite longitudinal ends of the absorbent article so as to form an X-shape.

Response to Arguments

Applicant's arguments regarding claims 15 and 17-19 filed 06 July 2006 have been fully considered but they are not persuasive. Applicants assert that Endres teaches a rectangular shaped opening, not a slit. This argument is not persuasive, because, according to the plain meaning of the term slit as presented by applicants, a slit is a long narrow cut or opening. As shown by figure 8, supra, the opening (38) disclosed by Endres meets this definition of a long

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narrow cut or opening. The fact that the side edges of the opening are slightly spaced apart does not preclude a reasonable interpretation that this opening is a slit.

Applicant's arguments with respect to claims 16, 20-30 and 32-34 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Bogart
21 July 2006



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER